Supreme Court, U.S.
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No. 01-1652

In the Supreme Court of the United States

SOUTH AUSTIN COALITION COMMUNITY COUNCIL, WALTER E. RYAN JR., THEODORE CHABRAJA, ANITA B. HULL, ROBERT RIFKIN, and PATRICK A. STEFFES,

Petitioners,

v.

SBC COMMUNICATIONS INC. and AMERITECH CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONSE TO PETITIONERS' SUPPLEMENTAL BRIEF

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The new authority petitioners cite in their Supplemental Brief has no relevance to the question presented in this case.

Petitioners seek certiorari to review the Seventh Circuit's dismissal of their Clayton Act § 7 challenge to the merger of SBC and Ameritech under an express exemption in § 7 for line extension mergers between common carriers that do not substantially compete. See 15 U.S.C. § 18. The cases petitioners bring to the Court's attention—*Law Offices of Curtis V. Trinko, L.L.P.* v. *Bell Atlantic Corp.*, 294 F.3d 307 (2d Cir. 2002), as amended, 2002 WL 31015490 (2d Cir. Aug. 30, 2002); *Covad Communications Co.* v. *BellSouth Corp.*, 299 F.3d 1272 (11th Cir. 2002); and *Verizon New Jersey, Inc.* v. *Ntegrity Telecontent Services, Inc.*, 2002 WL 1835433 (D.N.J. Aug. 12, 2002)—do not contain one word concerning the Clayton Act § 7 exemption for common carrier line extension mergers. In fact, none of the cases involves either Clayton Act § 7 or a telephone company merger.

Rather, all three cases address whether telecommunications customers may assert Sherman Act § 2 monopolization claims (for denial of essential facilities, refusal to deal, price squeezes, monopoly leveraging, or similar actions) consistent with the extensive regulatory regime established by the Telecommunications Act of 1996. *Trinko*, 2002 WL 31015490, at *14-*19; *Covad*, 299 F.3d at 1279-1291; *Verizon New Jersey*, 2002 WL 1835433, at *7-*15.

The *Trinko* and *Covad* cases do hold that customers may bring such claims,[1] but they in no way suggest that the

[1] The *Verizon New Jersey* court reached the opposite conclusion because the customers in that case failed to state antitrust claims independent from their claims that the defendant phone company had not complied with its Telecommunications Act obligations. 2002 WL 1835433, at *13-*15; see also *Goldwasser v. Ameritech Corp.*,

Telecommunications Act impliedly repealed the Clayton Act § 7 exemption at issue here, as petitioners argue. Indeed the logic behind *Trinko* and *Covad*—that the Telecommunications Act does not affect the application of the antitrust laws—bolsters the case for applying the common carrier exemption according to its plain terms. Simply put, the cases petitioners cite do not conflict with the Seventh Circuit's ruling in this case.

Respectfully submitted.

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222 F.3d 390, 399-401 (7th Cir. 2000).